

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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ELECTRONICALLY FILED  
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DATE FILED: 1/29/2021

ADWEEK, LLC,

Plaintiff,

-against-

ERIC POMPEI,

Defendant.

1:20-cv-08369-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

This action was removed to this Court from New York State Supreme Court, County of New York, on October 7, 2020 [ECF No. 1]. On December 2, 2020, the Court entered an Order directing (1) Plaintiff to show cause, in writing, why Plaintiff has failed to appear or taken any action to prosecute the case and (2) Defendant to serve the Order on Plaintiff on or before December 7, 2020, and file proof of such service on or before December 11, 2020 [ECF No. 6]. On December 28, 2020, because no proof of such service had been filed, the Court entered an Order directing Defendant (1) to show cause why counsel should not be sanctioned for failing to comply with the Court's Order and (2) to serve the Order dated December 2, 2020, on Plaintiff [ECF No. 7].

Defendant filed proof of service of the Court's Order on January 4, 2021 [ECF No. 8], and a letter advising the Court that "this matter has been settled and an agreement has been signed" on January 5, 2021 [ECF No. 9]. To date, Plaintiff has failed to appear or otherwise respond to the Court's Orders.

Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued without costs to any party and without prejudice to restoring the action to this Court's calendar if the application to restore the action is made by **February 28, 2021**. If no such application is made

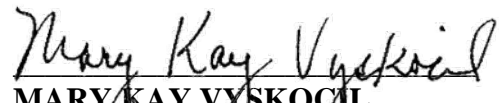
by that date, today's dismissal of the action is with prejudice. *See Muze, Inc. v. Digital On Demand, Inc.*, 356 F.3d 492, 494 n.1 (2d Cir. 2004)

Plaintiff is on notice that failure to comply with Court Orders and prosecute this case may also result in dismissal with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS FURTHER ORDERED that Defendant shall serve this Order on Plaintiff on or before February 3, 2021, and file proof of such service on or before February 10, 2021.

**SO ORDERED.**

**Dated: January 29, 2021**  
**New York, NY**

  
**MARY KAY VYSKOCIL**  
**United States District Judge**